Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

SURAIYA MATEEN
Petitioner

V.

JAMES R. MARSHALL
As Trustee
FRANK DICUS
AND
DICUS ENTERPRISES
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
TO THE ELEVENTH CIRCUIT
COURT OF APPEALS

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Suraiya Mateen
Individually &
as a Trustee of
a Living Trust
PETITIONER

QUESTION PRESENTED

Whether in a Core Proceeding, Bankruptcy Court is entitled to give res judicata (Claim Preclusion) effect to a State Court default judgment and dismiss with prejudice the Equity Claims of a party without Due Process.

Ref: 28 U.S.C § 157(b)(2)(A)(B)(K).

28 U.S.C. § 1334 (a)

LIST OF PARTIES

A list of all parties to the proceedings in the court below is as follows:

Mohammed A. Faiyaz	Debtor
Suraiya Mateen	Plaintiff-Appellant
Living Trust	Plaintiff Appellant
Frank Dicus & Dicus Enterprise	Defendant Appellee
James Marshall As Trustee	Defendant Appellee
All the Claimants in the Bankruptcy Ct	

PREFACE

A bankruptcy court's decision to give preclusive effect to a State Court judgment, particularly to a Default Judgment is a "Question of law" .

The US Supreme Court has not yet determined whether default judgments of State Courts are entitled to any preclusive effect in the Bankruptcy Court, under the doctrine of Res Judicata (claim Preclusion).

It has been noted that there is a deep split of authority on the above issue amongst the Circuit Courts.

This Petition is a good vehicle for the Honorable Supreme Court of the United States to resolve the existing conflict amongst the Circuit Courts on the following issue.

"Whether or not, the Bankruptcy Court is barred from looking beyond the State Court default judgment, so as to adjudicate a case without causing any injustice "

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STATUTES

28 U.S.C. § 1334 (a)(e)

28 U.S.C § 157(b)(2)(A)(B)(K)

11 U.S.C. § 541(d)

11 U.S.C. § 541(a)(1)

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner Suraiya Mateen respectfully petitions for a Writ of Certitiorari to review the Opinion of the United States Court of appeals for the Eleventh Circuit. The judgment was entered on August 12, 2009, Case No. 08-14396, and is unpublished. A Petition for Rehearing and Rehearing En Banc was timely filed and was denied on October 19, 2009.

OPINIONS BELOW	APPENDIX.
Eleventh Circuit' Denial of Rehearing or Enbanc	A
Court of Appeals Opinion	B
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JURISDICTION

The Eleventh Circuit Court of Appeals denied the Petition for reheating on October 19, 2009.

The Petition in the United States Supreme Court is being timely filed within 90 days as required by Rule No.13 of the Supreme Court.

The jurisdiction of the this court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

1 Federal

Fourteenth Amendment, Section 1 provides

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Seventh Amendment provides

" In suits of Common Law when the value of controversy exceed twenty dollars, the right of trial by jury shall be preserved. "

II. State of Georgia

Article I, Section I, Para I, II & XI

" No person shall be deprived of life, liberty or property except by due process of law."

Petitioners were deprived of their fundamental Due Process right and lost their hard earned assets.

FEDERAL STATUTORY PROVISIONS INVOLVED

The eleventh circuit Opinion on page no. 5, Foot Note No. 3 states;

"Because the Trustee filed the quit title adversary proceeding to determine as to what extent the disputed properties were the properties of the Estate which would confer jurisdiction under 28 U.S.C. § 1334(e)(1)".

The court of Appeals has overlooked the fact that after filing the adversary proceeding, the trustee failed to prosecute the case in order to determine to what extent the debtor has interest in the disputed properties, and whether the properties were the Bankruptcy Estate or not.

1. Pursuant to 28 U.S.C. § 1334 (a) and

28 U.S.C. § 1334 (e)(1) " The District Court shall have original and exclusive jurisdiction of all cases under title 11."

2. Pursuant to 28 U.S.C § 157(b)(2)(A)(B)(K), the Bankruptcy Court has Exclusive Juris diction on all Core Proceedings:

Core Proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims, liens and their validity.

The Eleventh Circuit Court of appeals has affirmed that in this case the proceedings in front of the Bankruptcy court are Core.

28 U.S.C. § 157(b)(2)(A)-(O) provides examples of core proceedings including but not limited to --

(A) matters concerning the administration of the estate. *See Manville Corp. v. Equity Sec. Holders Comm. (In re Johns-Manville Corp.)*, 801 F.2d 60 (2d Cir. 1986) (§ 105 action by debtor to enjoin equity security holders committee from prosecuting state court action to require shareholders' meeting); (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan of reorganization in a bankruptcy case; *see U.S. Abatement Corp. v. Mobil Exploration & Producing U.S., Inc. (In re U.S. Abatement Corp.)*,

79 F.3d 393 (5th Cir. 1996) (dispute over amount of creditor's claim and recoupment rights is core proceeding);

(C) counterclaims by the estate against "persons" filing claims against estate; *see Kamine/Besicorp Allegany, L.P. v. Rochester Gas & Elec. Co. (In re Kamine/Besicorp Allegany, L.P.)*, 214 B.R. 953, 972 (Bankr. D.N.J. 1997).

(K) determinations of the validity, extent, or priority of liens; *see In re Weaver*, 248 B.R. 106 (Bankr. N.D. Ohio 2000); *Diversified Mortgage Co. v. Gold (In re Gold)*, 247 B.R. 574 (Bankr. D. Mass. 2000); *In re Sims*, 181 B.R. 125, 127 n.2 (Bankr. N.D. Ala. 1995) (only

The Court of appeals has affirmed that the proceedings in the Bankruptcy Court were Core.

The question presented here is whether in a Core Proceeding , is it mandatory for the Bankruptcy court to exercise its Exclusive jurisdiction and look beyond the State Court judgment or the State Court judgment can create a res judicata effect.

STATEMENT OF THE CASE

This is a case wherein, the Bankruptcy Court has given res judicata effect to a State Court default judgment and dismissed with prejudice petitioner's and the Living Express Trust Equity Claims. Ironically, this has happened while the State court default judgment was under appeal in the State Court forum.

It is evidenced from the record of the case that the Bankruptcy Court granted Dicus's summary judgment motion and dismissed the claims of mateen and the living Trust without conducting any hearing .

Subsequent to the dismissal with prejudice of the Equity claims of the petitioner and the Living Trust, on April 4, 2003, by erroneous application of doctrine of res judicata (claim preclusion) , the Bankruptcy Trustee, (Respondent), disbursed

$ 587, 377 among the alleged creditors of the debtor. It is evident from the record that the Bankruptcy Trustee disbursed the money without determining the validity of the claims filed. Trustee failed to schedule hearings on the claims filed as required by as required by 28 U.S.C § 157(b)(2)(K).

Petitioners appealed to the district court and raised two issues:

1. Erroneous application of resj udicata to a State Court default judgment.

   Pursuant to 28 U.S.C. § 1334 (a) and 28 U.S.C

2. Lack of subject matter jurisdiction of the Bankruptcy Court as the matter was still pending in the state Court forum.

§ 157(b)(2)(A)(B)(K), the Bankruptcy Court has exclusive jurisdiction of all "Core Proceedings." Thus, the State Court judgments, particularly wherein the

Core issues were not the cause of action, shall not create res judicata effect in Federal Courts.

On September 28, 2007, after forty (40) months of thorough review, the Northern District Court of Georgia, reversed the Bankruptcy court and remanded the case back to the Bankruptcy Court. (Case No. 04- 02137).

The Bankruptcy Court on January 18, 2008, reinstated its May 2004 judgment. Petitioner again filed an appeal in the District Court.

The District Court (Case No. 08-CV-1218-TWT), this time affirmed the Bankruptcy Court, stating that Denial of appellants Petition for Certiorari by the Georgia Supreme Court renders the State Court default judgment final for the application of res judicata, *Ref:* Appendix C.

Petitioner appealed to the Eleventh Circuit

Court of appeals , In the initial brief petitioner raised the issue of erroneous application of res judicata as well as lack of subject matter jurisdiction.

On page No. 5 of its opinion, the Eleventh Circuit mentioned about the five arguments raised by the appellant in her initial brief .

The arguments made by the petitioner were regarding the lack of jurisdiction of the Bankruptcy Court and the erroneous application of the res judicata doctrine.

The Eleventh Circuit affirmed the District Court only on the issue of lack of jurisdiction raised by the appellant , but is silent on the issue of res judicata effect of the State Court default judgment.

The Court of appeals in its orders entered on August 12, 2009 has affirmed that the proceedings in front of the Bankruptcy Court were Core and that the

Bankruptcy Court had jurisdiction over this case Ref :Eleventh Circuit Opinion, foot note No. 7. But, the Court of Appeals overlooked the issue of res judicata .

Petitioner, therefore filed a Motion for reconsideration or reconsideration En banc, requesting the Court of Appeals to reconsider the appeal so as to enter its opinion on the issue of res judicata. But, the Motion is denied.

The important "Question of Law", Res judicata effect of a State Court default judgment in the Bankruptcy Court is therefore now in front of the Honorable Supreme Court.

Court of appeals are in conflict on the above issue. It is yet to be settled by the Honorable Supreme Court.

Pursuant to 28 U.S.C § 157(b)(2)(A)(B)(K),

cases in which the proceedings in front of the Bankruptcy Court are Core, then it is mandatory for the Bankruptcy Court to exercise its exclusive jurisdiction so as to adjudicate the cases on their merits and not to rely on the State Court default judgment.

State Courts are devoid of subject matter jurisdiction to adjudicate "Core Proceedings." The issue of declaring a Bankruptcy Estate and then administration of the Estate which was in front of the Bankruptcy Court could never have been raised in the State Court.

It was therefore an Error of the Bankruptcy Court to give preclusive effect to a state court judgment, and deprive petitioner of the fundamental guaranteed Due Process rights. The case should therefore be remanded back so as to be

adjudicated on its merits.

FACTS OF THE CASE

In the year 1992, Petitioner Suraiya Mateen purchased certain real estate properties solely by her own money and assigned them to a Living Trust. Her husband, debtor, Mohammed Faiyaz was one of the trustees and her daughters, beneficiaries. Documents proving that the properties were purchased solely by petitioner's money and assigned to the Living Trust were submitted to the Bankruptcy court, (Ref: Case No. 0164875, docket Nos. 61 & 73).

In the year 1996, debtor and respondent Dicus entered into a business transaction which failed. Dicus obtained a judgment against Faiyaz in the Fulton County. He then repossessed his collateral and sold it. He failed to claim in any court for any deficiency if at all it existed.

Out of greed, Dicus in the year 1998, filed a fraudulent transfer suit against debtor, Faiyaz involving the Living Trust properties . After realizing the frivolousness of his case, Dicus failed to prosecute the case for three years, and finally took a default judgment against the debtor and his family by defrauding the State Court while the debtor and his family were out of country.

In April, 2001, Faiyaz filed a chapter 7 Bankruptcy petition and listed the three trust properties belonging to a Living Trust for which he was one of the trustee. The financial statement clearly shows that the debtor has stated "properties were purchased by wife's money and assigned to trust"

On September 21, 2001, the Bankruptcy Trustee, respondent, James Marshall, filed an

adversary proceeding against petitioner and daughters to determine the extent of the interest in the properties. He then filed a Summary judgment Motion and presented the Gwinnett County default judgment in order to request the Bankruptcy Court to quit the title of the Trust properties into Bankruptcy Estate. The Bankruptcy Court Denied trustee's summary judgment motion. (Ad. Pr. No.6278 Doc.23). *Ref:* **Appendix E**.

After the denial of the Summary judgment motion, it was the fiduciary duty of the Bankruptcy Trustee to conduct a trial so as to determine the extent debtor's interest in the properties. But, the Trustee failed to prosecute the case any further and kept it pending. The Bankruptcy Estate was never declared.

On October 8, 2002, the alleged creditor,

respondent Dicus and his attorneys amazingly filed a summary judgment motion in the Trustee's adversary proceeding case and again submitted the same state court default judgment (which the Trustee has submitted with his summary Judgment Motion) and asked the Bankruptcy Court to apply doctrine of resjudicata to the equity claims of Mateen and the Living Trust.

The Bankruptcy Court without conducting any hearing on the Motion, applied resjudicata (Claim Preclusion) to the State Court Default judgment and dismissed with prejudice, the Equity Claims of Mateen and the Living Trust .

It was a Gross Error of the Bankruptcy Court to grant Dicus's summary judgment motion. The Bankruptcy Court was misguided by Dicus's attorneys to dismiss with prejudice the equity claims of the

petitioner and the Living Trust.

Bankruptcy Court has deprived petitioners of their guaranteed due process right.

This has resulted in subsequent appeals. Now the issue is in front of the Honorable Supreme Court to resolve.

REASONS FOR GRANTING THE PETITION

I. Courts of Appeals are Deeply divided on the issue of Res Judicata Effect of StateCourt default Judgment in the Bankruptcy court

This case presents a question , over which the Courts of Appeals are deeply and intractably divided,

"Whether in a Core proceeding the Bankruptcy Court can give Res Judicata (claim preclusion) effect to a State Court default judgment? "

The Constitutional laws of Due Process are involved with the above question.

This case is a good vehicle to resolve the ever

widening circuit split on an important and recurring question of above stated federal law, that has to be settled.

In order to analyze whether the doctrine of res judicata is applicable in a case, almost all the Circuit Courts apply the following four prongs test and see that all the following four elements are present, before applying res judicata to a case.

First, the prior judgment must be valid in that it was rendered by a court of competent jurisdiction and in accordance with the requirements of due process.

Second, the judgment must be final and on the merits.

Third, there must be identity of both parties or their privies.

Fourth, the later proceeding must involve the same cause of action as involved in the earlier proceeding.

The Eleventh Circuit *In Re: Atlanta Retail Inc.* has stated *"In order to determine whether the two proceedings are based on the same cause of action, the*

test is whether they arise out of the same nucleus of operative fact, or [are] based upon the same factual predicate." Kaiser, 244 F.3d at 23 1297.

Some of the Circuit Courts look at the State laws before applying res judicata and some ignore. The Eleventh Circuit , in PLEMING v. UNIVERSAL RUNDLE (Case No. No. 97-8170), has stated:

"Both federal and Georgia principles of res judicata require the cause of action in the first and second lawsuit to be the same, see, Durbin, 793 F.2d at 1549, with Waldroup v. Greene County Hosp. Auth., 265 Ga. 864, 866, 463 S.E.2d 5, 7 (1995).

In the case at bar, the cause of actions in the State Court and in the Bankruptcy Court were entrely different :

In the state Court, Dicus filed a frivolous case of alleged fraudulent transfers of certain properties

against the debtor and his family. But, the properties have always been the assets of a Living Trust which was declared nearly a decade prior to any transaction between Dicus and the debtor. Dicus then failed to prosecute the case for three years, and took a default judgment against petitioner and her family while they were out of country.

In the Bankruptcy court , the trustee filed an adversary proceeding requesting the Bankruptcy Court to quit the title of the properties into the Bankruptcy Estate. Bankruptcy Estate is never formed unless the trustee determines the equitable interest of the debtor in the properties 11 U.S.C. Sec. 541(d).

Thus, cause of action in the adversary proceeding was to declare if the properties in question are the Bankruptcy Estate . (*Ref: Eleventh Circuit's*

Opinion , Page No. 5, Foot note No. 3) , Appendix A

Since the cause of action in the State Court and the Bankruptcy Court was different, res judicata cannot be apply.

The Eleventh circuit Court in *Ref to* , 193 F3d 1235 John Ragsdale Jr v. Rubbermaid, States "Barring a claim on the basis of res judicata is a determination of law. Israel Discount Bank Ltd. v. Entin, 951 F.2d 311, 314 (11th Cir. 1992). Our standard of review therefore is de novo. Id., citing In re Justice Oaks II, Ltd., 898 F.2d 1544, 1548 n.1 (11th Cir.),

In the Eleventh Circuit, "[t]he principal test for determining whether the causes of action are the same is whether the primary right and duty are the same in each case. In determining whether the causes of action are the same, a court must compare the substance of the actions, not their form." Citibank, 904 F.2d at 1503 (citations omitted). "It is now said, in general, that if a case arises out of the same nucleus of operative fact, or is based upon the same factual predicate, as a former action, that the two cases are really the same 'claim' or 'cause of action' for purposes of res judicata." Id.

As shown above, in the instant case, the cause of action in the two courts was entirely different and as such doctrine of res judicata was not applicable.

Moreover, determination of a Bankruptcy Estate is a Core proceeding on which the Bankruptcy court has an Exclusive Jurisdiction.

Amazingly, the Eleventh Circuit Court of Appeals Opinion herein is devoid of a Statement of "Standard of Review".

Application of the doctrine of res judicata is a "question of law" raised by the petitioner and required "de novo" Standard of Review to be applied.

Petitioner's challenge to the District Court Orders would have succeeded if the Eleventh Circuit would not have overlooked the erroneous application of res judicata to her claims in the Bankruptcy Court. Eleventh circuit's opinion in the case at bar is incongruous, unclear and incomplete.

The following two United States Supreme Court's opinions have resolved the issue of application

of res judicata in cases wherein, there has been Exclusive jurisdiction of the Bankruptcy Court.

1. The US Supreme Court In Brown v. Felsen, 442 U.S. 127, 139-40, 99 S.Ct. 2205, 2213, 60 L.Ed.2d 767 (1979),

concluded that the exclusive jurisdiction granted to bankruptcy courts to resolve questions of dischargeability under section 17a(2) of the Bankruptcy Act prevented the application of claim preclusion--res judicata--to resolve questions of dischargeability.

2. The US Supreme Court *In ref* : 470 US 373 Marrese v. American Academy of Orthopaedic Surgeons , 470 U.S. 373, See 471 U.S. 1062, 105 S.Ct. 2127,
Reversed the Seventh Circuit

This case concerns the preclusive effect of a state court judgment in a subsequent lawsuit involving federal antitrust claims within the exclusive jurisdiction of the federal courts. The Court of Appeals for the Seventh Circuit, sitting en banc, held as a matter of federal law that the earlier state court judgments barred the federal antitrust suit. 726 F.2d

1150 (1984).

The issue presented by this case is whether a state court judgment may have preclusive effect on a federal antitrust claim that could not have been raised in the state proceeding. Although federal antitrust claims are within the exclusive jurisdiction of the federal courts, see, *e.g., General Investment* Co. v. Lake Shore & M.S.R. Co., 260 U.S. 261, 286-288, 43 S.Ct. 106, 116-117, 67 L.Ed. 244 (1922), the Court of Appeals ruled that the dismissal of petitioners' complaints in state court barred them from bringing a claim based on the same facts under the Sherman Act.

A federal rule might be fashioned from the test, which this Court has applied in other contexts, that a party is precluded from asserting a claim that he had a "full and fair opportunity" to litigate in a prior action. See, *e.g., Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 485, 102 S.Ct. 1883, 1899, 72 L.Ed.2d 262 (1982); *Allen v. McCurry*, 449 U.S. 90, 95, 101 S.Ct. 411, 415, 66 L.Ed.2d 308 (1980); *Montana v. United States*, 440 U.S. 147, 153, 99 S.Ct. 970, 973, 59 L.Ed.2d 210 (1979); *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 328, 91 S.Ct. 1434, 1442, 28 L.Ed.2d 788 (1971).

To the extent that state preclusion law indicates that a judgment normally does not have claim preclusive effect as to matters that the court lacked jurisdiction to entertain, lower courts and commentators have correctly concluded that a state court judgment does not bar a subsequent federal antitrust claim. See 726 F.2d, at 1174 (Cudahy, J., dissenting) (citing cases); 692 F.2d, at 1099 (Stewart,

J., dissenting); Restatement, *supra,* § 25(1), Comment *e; id.* § 26(1)(c), Illustration 2; 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4470, pp. 687-688 (1981).

The issue of application of res judicata to the above Federal issues like dischargeability and anti trust claims have been settled by the Supreme Court. The outcome of almost all the Circuit Courts are guided by the above stated opinions.

CONTLICTS AMONG THE CIRCUIT COURTS ON "CLAIM PRECLUSION " EFFECT OF STATE COURT DEFAULT JUDGMENTS IN THE BANKRUPTCY COURT

A bankruptcy court's decision to give preclusive effect to a state court judgment particularly to the default judgments is a question of law that is generally reviewed de novo.

The US Supreme Court has not yet determined whether default judgments are entitled to any preclusive effect under the doctrine of res judicata.

But it has been noted that there is a split of authority

on the issue with some circuit courts.

FOURTH CIRCUIT :

Fourth Circuit does not favor application of Res judicata in the Bankruptcy court based on a state Court default judgment

In Ref : 944 F2d 199 Bellini Imports Ltd v. Mason and Dixon Lines Inc ,

The Mason and Dixon Lines, Inc. appeals an order of the district court reversing a disallowance by the bankruptcy court of an administrative claim of Bellini Imports, Ltd. that was based on a default judgment obtained in the United States District Court for the Eastern District of Pennsylvania. We hold that the judgment obtained in the Pennsylvania action is unenforceable against the bankruptcy estate of Mason and Dixon because the bankruptcy trustee was not named as a party defendant. Judgment Reversed

Ninth circuit

Ninth Circuit does not favor res judicata or claim preclusion in the Bankruptcy Court.

116 F3d 484 Presta v. F McClendon
Any default judgment shall not have res judicata or issue preclusion effect with respect to issues of amount or dischargeability and this Court shall reserve ruling on the issues of whether the plaintiff's

claims against defendant debtors arnondischargeable VACATED and REMANDED.

Eleventh circuit

Does not favor res judicata effect of a State Court judgment in the Bankruptcy Court

80 F3d 452 Six Ob/gyn Solutions Lc v. Six

In ruling on an objection to the claim, the bankruptcy judge concluded that Dr. Six should have raised his argument for an offset in the state court proceeding leading to the entry of the February 1991 judgment. Having failed to do so, he was subject to the defense of res judicata. However, the bankruptcy judge determined that under Florida law, res judicata is not rigidly enforced if its application would result in manifest injustice. He decided to invoke the exception because, otherwise, Ob/Gyn would obtain a windfall On appeal, the district court affirmed, agreeing that under Florida law, res judicata would not be applicable because it would be inequitable under the circumstances. Citing Pepper v. Litton, 308 U.S. 295, 305, 60 S.Ct. 238, 244-45, 84 L.Ed. 281 (1939), the court also affirmed on the ground that a bankruptcy judge has broad equitable power to inquire into the validity of any claim, even one that had been reduced to judgment. Ob/Gyn has appealed.parties and the bankruptcy judge focused their attention on the effect of res judicata on Dr. Six's challenge to Ob/Gyn's claim. When res judicata is invoked to give preclusive effect to a state court judgment, a bankruptcy judge must apply state law. Allen v. McCurry, 449 U.S. 90,

96, 101 S.Ct. 411, 415-16, 66 L.Ed.2d 308 (1980); In re St. Laurent, 991 F.2d 672, 676 (11th Cir.1993); Kelleran v. Andrijevic, 825 F.2d 692, 694 (2d Cir.1987).

The Eleventh Circuit Court affirmed the District Court.

Second Circuit

The Second circuit favors the application of preclusive effect of a State Court default Judgment in the Bankruptcy Court.

In ref: 825 F2d 692 Kelleran v. Andrijevic

This is an appeal from a judgment entered in the United States District Court for the Western District of New York, Curtin, C.J., affirming a judgment entered in the United States Bankruptcy Court, McGuire, J., that disregarded the preclusive effect of a state court default judgment fixing the liability of the debtor-appellee, Andrijevic, to one of the creditors-appellants, Eighteen Mile Corporation, and disallowed the creditors' claims.
This appeal presents the issue whether the bankruptcy court's equitable powers permit it to disregard the preclusive effect of a state court default judgment where the judgment was obtained by a creditor without fraud or collusion, but the bankruptcy court finds the creditor's claims to be "wholly without merit."

The Second Circuit Reversed and remanded the case.

STATEMENT OF CITATIONS OF AUTHORITY

Entry by the state court of a "default judgment" precludes the bankruptcy court from looking behind the state court determination and disallowing the claims in the bankruptcy proceeding is mostly not acceptable by Circuit Courts. To require a mechanical application of the doctrine of res judicata and the seeming dictate of 28 U.S.C. Sec. 1738 ignores the broad equitable powers of the bankruptcy court to take actions necessary to achieve an equitable distribution of the bankrupt's estate among creditors. Although the federal bankruptcy power is "a field whose boundaries may not yet be fully revealed," Continental Ill. Nat'l Bank v. Chicago, Rock Island and Pac. Ry. Co., 294 U.S. 648, 671, 55 S.Ct. 595, 604, 79 L.Ed. 1110 (1935), in this instance, given the bankruptcy court's broad equity powers, it is clear that a number of factors combine to support the bankruptcy judge's decision to go behind the state court determination.

I. The Nature of Bankruptcy Court Power

A. Paramountcy of Bankruptcy Law

The power of the bankruptcy court stems from a grant of authority in Article I of the Constitution, which grants to Congress the power "to establish ... uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. art I, Sec. 8, cl. 4. The bankruptcy law is a paramount law, which takes precedence over all state laws and proceedings. Vanston Bondholders Protective Comm. v. Green, 329

U.S. 156, 67 S.Ct. 237, 91 L.Ed. 162 (1946); Kalb v. Feuerstein, 308 U.S. 433, 60 S.Ct. 343, 84 L.Ed. 370 (1940). It is a power intended to be applied uniformly throughout the nation in the disposition of claims against insolvent estates. For instance, "[i]n determining what judgments are provable and what objections may be made to their proof, and in determining the extent to which the inequitable conduct of a claimant[,] in acquiring or asserting his claim in bankruptcy, requires its rejection or its subordination to other claims ..., the bankruptcy court is defining and applying federal, not state, law." Heiser v. Woodruff, 327 U.S. 726, 732, 66 S.Ct. 853, 856, 90 L.Ed. 970 (1946).

B. Equitable Powers Limit the Principle of Res Judicata

In exercising this paramount power, the bankruptcy courts are "essentially courts of equity, and their proceedings inherently proceedings in equity." Local Loan Co. v. Hunt, 292 U.S. 234, 240, 54 S.Ct. 695, 697, 78 L.Ed. 1230 (1934). Bankruptcy proceedings are to be "administered in accord with the general principles and practice of equity." In re Lustron Corp., 184 F.2d 789, 793 (7th Cir.1950), cert. denied, 340 U.S. 946, 71 S.Ct. 531, 95 L.Ed. 682 (1951). See also Pepper v. Litton, 308 U.S. 295, 60 S.Ct. 238, 84 L.Ed. 281 (1939); Continental Ill. Nat'l Bank v. Chicago, Rock Island and Pac. Ry. Co., 294 U.S. 648, 55 S.Ct. 595, 79 L.Ed. 1110 (1935); Corley v. Cozart, 115 F.2d 119 (5th Cir.1940); Larson v. First State Bank, 21 F.2d 936 (8th Cir.1927). The bankruptcy court is charged with preventing injustice

and unfairness. By statute, "the bankruptcy court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. Sec. 105(a).

Given the broad equitable powers of the bankruptcy court, the majority is overly strict in its view of the grounds for collateral attack on a prior state court judgment in bankruptcy court. In its view, a prior state court judgment must be treated as res judicata unless the judgment is procured through "fraud or collusion," or the issuing court lacked jurisdiction. Since the majority considers that the present case does not raise either of these two exceptional circumstances, it concludes that the bankruptcy court is without power to look behind the state court judgment and disallow the claims based upon it. However, the very structure of the bankruptcy laws, as well as the breadth of the bankruptcy court's equity power to do justice and avoid substantial unfairness in allowing or disallowing claims, supports the view that the bankruptcy court was within its power in disallowing these claims, and that these two types of exceptions are not exclusive.

1. Structure of Bankruptcy Laws

That the bankruptcy court's mandate to do equity is far broader than that suggested by the majority is evidenced by the very structure and extent of the court's authority to dispose of creditors' claims. "The power of the bankruptcy court to subordinate claims or to adjudicate equities arising out of the relationship between the several creditors is

complete.... [T]he theme of the Bankruptcy Act is equality of distribution." Sampsell v. Imperial Paper & Color Corp., 313 U.S. 215, 219, 61 S.Ct. 904, 907, 85 L.Ed. 1293 (1941). Commencing with the court's power to issue automatic stays pursuant to 11 U.S.C. Sec. 362, as it did in the present case, and progressing through its power to disallow, see Sec. 502, subordinate, see Sec. 510(c), and discharge claims, see Sec. 523, the bankruptcy court's control over the bankrupt's estate is plenary. It has a variety of tools with which it can freely exercise its equitable powers to affect the particularities of an individual debtor-creditor relationship or the relationship among creditors. Under the doctrine of equitable subordination, for instance, a bankruptcy court may subordinate a particular claim if it finds that the creditor's claim, while not lacking a lawful basis nonetheless results from inequitable behavior on the part of that creditor. See 11 U.S.C. Sec. 510(c). See also In re W.T. Grant Co., 699 F.2d 599 (2d Cir.1983) (Friendly, J.); Herzog & Zweibel, The Equitable Subordination of Claims in Bankruptcy, 15 Vand.L.Rev. 83 (1961).

2. Equity Power to Allow or Disallow Claims is Broad

The case law provides strong support for a broad view of the bankruptcy court's authority to determine whether to allow or disallow a particular claim that has been reduced to judgment in state court. "It has long been a basic function of the bankruptcy court, both by reason of its equitable powers and the bankruptcy statute, to pass upon the

validity of creditors' claims." In re Farrell, 27 B.R. 241, 245 (Bankr.E.D.N.Y.1982). The bankruptcy court "in passing on allowance of claims sits as a court of equity.... In the exercise of its equitable jurisdiction the bankruptcy court has the power to sift the circumstances surrounding any claim to see that injustice or unfairness is not done in administration of the bankrupt estate." Pepper v. Litton, 308 U.S. 295, 307-08, 60 S.Ct. 238, 245-46, 84 L.Ed. 281 (1939). This sifting includes "full power to inquire into the validity of any claim asserted against the estate and to disallow it if it is ascertained to be without lawful existence. And the mere fact that a claim has been reduced to judgment does not prevent such an inquiry." Pepper, 308 U.S. at 305, 60 S.Ct. at 244 (citations omitted) (emphasis supplied). These broad powers have been "invoked to the end that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done." Pepper, 308 U.S. at 305, 60 S.Ct. at 244. See also In re Century Vault Co., 416 F.2d 1035 (3d Cir.1969). As one learned treatise has noted:

It is the bankruptcy court, through its bankruptcy judge, which is to determine whether or not a claim is to be allowed or disallowed, i.e., whether the content of the claim is within the reach of section 502(b). As it is contemplated under the Code as well as it was under the former Act that the determination of the allowability of claims is within the province of the bankruptcy judge, it follows that virtually all matters involving the allowability of claims and their right therefore to share in the assets of the debtor

ordinarily will be determined by the bankruptcy judge, generally exclusive of all other courts.

3 Collier on Bankruptcy Sec. 502.02, at 502-22-23 (15th ed. 1979).

3. Relationship Between Bankruptcy Court's Power and Res Judicata Doctrine

It is clear that the principles of res judicata are not to be mechanically applied in the bankruptcy context. To the extent a prior state court judgment is recognized in bankruptcy court, such recognition is not based "upon a technical application of res judicata doctrine, but upon the court's recognition that the equitable considerations underlying that doctrine require its application in the absence of compelling circumstances to the contrary." Margolis v. Nazareth Fair Grounds & Farmers Mkt., 249 F.2d 221, 224 (2d Cir.1957). As Justice Rutledge reasoned:

If ... the bankruptcy court has power to reject claims, even when previously allowed, "in whole or in part 'according to the equities of the case,' " ... the bankruptcy court in the allowance or rejection and ordering of claims shall not be bound by any broad or rigid rule of res judicata.

Heiser v. Woodruff, 327 U.S. 726, 741, 66 S.Ct. 853, 860, 90 L.Ed. 970 (Rutledge, J., concurring) (citations omitted) (emphasis supplied). "A state court judgment does not have res judicata effect because the bankruptcy judge is the only authority that can decide if a claim is allowable, and the judge may look behind

the judgment to determine if a contractual basis exists for the claim." 3 Collier on Bankruptcy p 502.02, at 502-22-23 n. 8 (citations omitted).

The relationship between res judicata and the bankruptcy court's equity power is thus well captured by the reasoned dicta in Margolis v. Nazareth:

To the extent that equitable principles require reexamination by the bankruptcy court of the bases for the judgment where these bases have been or could have been previously adjudicated the doctrine of res judicata is inapplicable in bankruptcy proceedings.

249 F.2d at 224.

II. The Character of the State Court Ruling

Given these broad powers of equity and the nature of the relationship between the court's equity power and the doctrine of res judicata, one set of factors in particular weighs in favor of the bankruptcy court invoking its equity power to disallow the claims here in issue even though they have proceeded to judgment in state court. These factors relate to the character and content of the judgment here at issue, as opposed to its form. In this case, "judgment" was issued on the basis of a default and did not determine the substantive rights of the parties.

A. Default Judgments Deserve Close Scrutiny

As a general matter, judgments which may be

characterized as default judgments deserve closer scrutiny by the bankruptcy court than would otherwise be the case. "Especially in the case of a pre-bankruptcy judgment, it may at times be proper to consider whether judgment followed vigorous litigation by the debtor." Margolis v. Nazareth, 249 F.2d at 224 (citations omitted).

B. Procedural Character of Determination Here at Issue

The bankruptcy court, in exercising its equitable discretion, should of course give due consideration to the state's interest in having its court's determinations recognized. This interest, however, must be balanced against the bankruptcy court's interest in reaching a just and equitable result in the overall circumstances of the case. In determining whether to give effect to a state court ruling, the bankruptcy court may appropriately consider whether that ruling was the enforcement of a state procedural rule or was a finding of the existence of an ingredient to the establishment of a substantive right.

Thus, the basis for the state court's decision to enter judgment in this case was merely the debtor's inability to comply with a orders of the court to pay $ 2000 to the Respondent.. See generally Societe Internationale v. Rogers, 357 U.S. 197, 78 S.Ct. 1087, 2 L.Ed.2d 1255 (1958) (Inability to pay , is not sufficient for entry of judgment under Fed.R.Civ.P. 37). Stripped of its technical effect, the only interest that the default procedure is designed to protect is the interest of the state court in judicial economy; the

state court's order was simply in aid of its desire to have cases filed in its court disposed of expeditiously in order to minimize the effects of a congested docket.

C. Limited Scope of State Court Adjudication

The majority, in its effort to give full faith and credit to this state court determination, confronts a conceptual conundrum. It criticizes the bankruptcy court for "improperly incorporat[ing] its findings a matter already resolved by the state court default judgment
As a result, under general principles of res judicata such a default judgment would not have issued preclusive effect in subsequent litigation.

Professor Moore reasons similarly, in discussing a variation on the facts of the Heiser case, in which the issue was whether fraud had been involved in the procurement of a default judgment by a creditor. The point is, there are different interests to be protected, as Professor Moore perceptively observed:

Let us ... assume that the issue of fraud [in the procurement of a default judgment] had not been litigated by either the bankrupt or the trustee. This issue would then be open to the trustee when the creditor filed his claim based on his judgment, since the issue had not been adjudged, ...
1B J. Moore, Moore's Federal Practice p 0.419[3.-6], at 684-85

To sum up, the broad equity power of the bankruptcy court to declare if the properties in question are the assets of a bankruptcy estate and if

they are, then to achieve a just distribution of the bankrupt's estate militates against a mechanical application of res judicata to prior state court judgments.

In this case, it was a Gross Error of the bankruptcy court as it failed to properly exercise their equity power in allowing and disallowing the claims.

A variety of circumstances combine to support nullify the bankruptcy court's decision. The state court judgment was a default judgment . The state court did not adjudicate any of the merits of the case. Consequently, contrary to the Bankruptcy Court's assumption, no issues have been "resolved" for purposes of giving the state court's actions issue preclusive or claim preclusive effect in the bankruptcy proceeding. . .

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Dated
Jan 14, 2010

Respectfully Submitted

S Mateen

Suraiya Mateen
Individually, and
As a trusee of the
Living Trust

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No.08 - 14396
Non - Argument Calendat

D,C. Docket No. 08 - 01218- CV-TWT-1
BKCY N0. 01- 64875-bkc-mg

US Court of Appeals
Eleventh Circuit (Seal)
October 19, 2009
Thomas K Kahn
Clerk

IN REF:
MOHAMMED FAIYAZ Debtor

SURAIYA A. MATEEN Plaintiff Appellant

Versus

JAMES R. MARSHALL
As Trustee,
FRANK DICUS,
DICUS ENTERPRISES Defendants-Appellees

Appeal from the United States District Court
For the Norther District of Georgia

ON PETITION (S) FOR THE REHEARING
AND
PETITIONS FOR REHEARING EN BANC

BEFORE: BARKETT, MARCUS AND ANDERSON,
Circuit Judges

PER CURIAM:

The Petition for Rehearing are Denied and no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition (s) for Rehearing EnBanc are Denied,

ENTERED FOR THE COURT

/SD/

UNITED STATES CIRCUIT JUDGE

[DO NOT PUBLISH]

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No.08 - 14396
Non - Argument Calendat

D,C. Docket No. 08 - 01218- CV-TWT-1
BKCY N0. 01- 64875-bkc-mg

US Court of Appeals
Eleventh Circuit (Seal)
August 12, 2009
Thomas K Kahn
Clerk

IN REF:
MOHAMMED FAIYAZ Debtor

SURAIYA A. MATEEN Plaintiff Appellant

Versus

JAMES R. MARSHALL
As Trustee,
FRANK DICUS,
DICUS ENTERPRISES Defendants-Appellees

Appeal from the United States District Court
For the Norther District of Georgia

August 12, 2009

Before BARKETT, MARCUS and ANDERSON,
Circuit Judges

PER CURIAM :

This appeal concerns the entitlement to proceeds from the sale of two properties, whose ownership was disputed in both a state court fraudulent conveyande action and in a quiet title adversary proceeding in the U.S. Bankruptcy Court for the Northern District of Georgia.

Suraiya Mateen , appealing pro se, is the wife of the former owner of these properties. The proceeds from the sale of these properties were awarded by the Bankruptcy Court to the creditors of Mateen's husband. Mateen appeals the ruling which effectuated the transfer of the proceeds to her husband's creditors. Specifically, she appeals the district court's decision affirming the bankruptcy court's earlier orders that (1) entered a final judgment against her in the quiet title adversary proceeding, (2) denied her motion in the main bankruptcy proceeding to recapture the proceeds from the sale of the two properties, which were then disbursed to the creditors, and (3) declined to reconsider those decisions.

BACKGROUND

This dispute originated over a breach of

contract between Mateen's husband, Mohammed A.Faiyaz (the "Debtor" and Frank Dicus and Dicus Enterprises (collectively the "Creditors"). In the resulting law suit, the Fulton County, Superior Court entered judgment and monetary damages for the Creditors. In an attempt to collect, the Creditors brought an action against the debtor in Gwinnett county, alleging that he fraudulently conveyed the properties involved in this case to family Trust to avoid paying the judgment. The Gwinnett County Superior Court entered a default judgment in favor of the creditors, which the debtor appealed. Before the judgment was appealed, however, the Debtor filed for Chapter 7 Bankruptcy Protection, triggering the automatic stay provision of 11 U.S.C § 362.

In his scheduled of assets, the debtor listed, inter alia, the two properties at issue even though he had assigned them to the Suraiya Faiyaz Living Trust (foot note1). The Trustee of the Bankruptcy Estate (the "Trustee"), then filed a separate quiet title adversary proceeding in the Bankruptcy Court against Mateen and her daughters, Roohi Fatima Faiyaz and Reema Mohammedi, (collectively the "Claimants") to determine the extent of the Bankruptcy Estate's interest in these properties. Thus, two concurrent Bankruptcy Court actions were in progress at this point__ the main Bankruptcy proceeding initiated by the Debtor and the quiet title adversary proceeding initiated by the Trustee.

The bankruptcy court granted conditional relief to the creditors from the automatic stay in the main case, allowing them to reopen the Gwinnett County fraudulent transfer action. The State appellate court eventually affirmed and the Georgia Supreme Court

denied certiorari. While that fraudulent action was still on appeal in State system, the bankruptcy court entered judgment against he Debtor and Claimants in both the main case and the quiet title adversary proceeding, on the basis of res judicata pursuant to the State Court fraudulent conveyance action. It then denied their subsequent motion to set aside the judgment in the Bankruptcy proceeding(the "May 2004 order"), and Mateen appealed. The district court reversed the bankruptcy court's May 2004 Order because the State Court fraudulent litigation had not yet been comleted and was not final at that point. After this reversal, Mateen filed a motion in the main bankruptcy court proceedings to compel the Trustee to recapture the proceeds from the sale of the disputed properties, and to hold those funds pending the bankruptcy court's reconsideration of her claims.

Once the Georgia supreme court had denies certiorari, the bankruptcy court denied Mateen's motion to recapture proceeds in the main bankruptcy proceeding and reentered its May 2004 order and judgment in the quirt title adversary proceeding(the "January 2008 order"). Mateen again moved for reconsideration, which the bankruptcy court denied. Mateen then appealed the denial of the reconsideration of her motion to recapture proceeds to the district court. The district court affirmed the bankruptcy court's denial of reconsideration, and she appeals to this court.

Initially, we rejuect the Credirors argument that both the district court and our court lack jurisdiction over her bankruptcy appeal. We have reviewed the record and find her appeal timely.

Turning to Mateen:s claim that the bankruptcy

court lacked jurisdiction to enter its orders, we conclude that none of the five arguments she presents on this issue have merit. Mateen 's first argument that the bankruptcy court lacked subject matter jurisdiction over the properties because the bankruptcy estate was never formed is not supported by the record (Foot note 3). The remaining four jurisdictional arguments all lack any merit : (1) that the bankruptcy court permanently relinquished jurisdiction over all matters relating to the ownership of the properties by lifting the stay during dependency of the state court proceeding (foot note No. 4) (2) that the land sale proceeds were not the "property of the estate"_ and therefore the bankruptcy court lacked jurisdiction_ because the bankruptcy court had earlier denied the Trustee's motion for summary judgment (foot note 5) (3) that the mandatory abstention doctrine prevented the bankruptcy court from reentering final judgment based on res judicata while a petition for certiorari on the state court judgment was pending before the US Supreme Court (foot Note 6) and (4) that the parties consent was required(but never given) before the bankruptcy court could exercise jurisdiction, arguing that the bankruptcy matter was a non-core proceeding.(foot note 7).

We also find that, since the bankruptcy court did not err by entering the January 2008 order while a petiton for certiorari in the U.S. supreme court waspending,Mateen's argument that the orders of the bankruptcy court violated the U.S. and Georgia Constitution are without merit.

Finally, the argument made for the first time in her reply brief are deemed waived as they awere not raised in her inititial brief. Big Top Koolers, Inc. v.

Cicus-Man snacks, Inc. 528 F. 3d 839, 844 (11th Cir. 2008). Likewise we decline to consider the arguments and cases cited in Mateen's "Citations of Supplemental Authority" because this pleading substantially esceeds the 350- word limitation and does not cite any pages in her initial brief to clarify the significance of the supplemental citations. Further more, we have not granted her leave to file a supplemental brief.

CONCLUSION

For all of the above reasons, the district court did not err by affirming the bankruptcy court's decision to (1) reenter final judgment against Mateen in the quiet title adversary proceeding, (2) deny her motion to recapture proceeds in the main bankruptcy proceeding and (3) deny her motion for reconsideration of those rulings.

AFFIRMED

FOOT NOTES

1. It was this transfer to the truse that was the subject of the state court fraudulent conveyance action. The debtor and Mateen were settlers and trustees of this trust, with their daughters as the beneficiaries.

2. Mateen's motion for reconsideration had the potential to toll the appeal period because the bankruptcy court entered the contested order on

January 18, 2008 and mateen's motion for reconsideration was stamped as filed on January 28, 2008,within the the ten-day window. Second, Mateen's motion for reconsideration counts as a tolling motion because she sought, through that motion, to alter or amend the bankruptcy court's January 2008 order. Third, mateen's February 25, 2008 notice of appeal to the district court was timely because the tenth day after the February 13, 2008 order disposing of her motion for reconsideration fell on Saturday. Pursuant to the rules regarding computation of time, she had until the following Monday to file her appeal. Fed.R.Bankr.P.9006(a)

3. Because the Trustee filed the quiet title adversary proceeding to determine whether and to what extent the disputed properties were "property of the estate", which would confer jurisdiction under 28 U.S.C. § 1334(e)(1) , the entire litigation on the merits of that proceeding was a proper exercise of the bankruptcy court's jurisdiction to determine its jurisdiction.

4. The conditional lifting of the stay did not relate to the disputed land sale proceeds, The bankruptcy court merely granted the Creditors conditional relief from the stay to allow them to liquidate their damages and attorney's fees under the pre-bankruptcy petition Gwinnett county judgment against the Claimants.

5, The bankruptcy court ultimately found that the Gwinnett County Court determine that the debtor did hold title to the properties prioe to declaring

bankruptcy in April 2001.

6. A state court judgment becomes final for the puposes of res judicata after the Supreme Court of Georgia denies a petition for certiorari. See, eg, Hurt v. Norwest Mortaga ,Inc, 580 S.E. 2d 580, 585 (Ga. Ct App.2003)

7. Despite her current assertions on appeal, Mateen previously admitted in her answer to the Trustee's complaint in the adversary proceeding that the proceeding did involve a core matter under 28 U.S.C. § 1579b)(2) and the district court made no contrary finding.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF GEORGIA, ATLANTA DIVISION

MOHAMMED A. FAIYAZ
Debtor- Appellant

V.

CIVIL ACTION
FILE NO.
1: 08-CV-1218-TWT

JAMES R. MARSHALL
As Trustee,
Appellee

ORDER

This is a pro se appeal from the Order of the Bankruptcy Court denying the Motion for Reconsideration (Br.Doc. 200) of Suraiya Mateen. This is the latest chapter of eleven years of litigation between the Debtor and Frank Dicus. The litigation arises out of the purchase of a dry cleaning business by the debtor and his subsequent default on the notes for the balance of the purshase price. After Dicus obtained a judgment against the Debtor, litigation in

the State Courts resulted in setting aside certain fraudulent conveyances of property from the debtor to his wife and children. The property was liquidated by the Trustee and Dicus and other creditors were paid $ 587,377 in partial satisfaction of their claims. The Bankruptcy Court entered final judgment against the debtor based upon res judicata. The debtor appealed to the District Court which reversed and remanded the case for the Bankruptcy Court to consider whether the State Court judgment was final in light of the debtor's pending appeal to the Georgia Court of Appeals. The Georgia Court of Appeals has affirmed the judgment of the lower court and the Georgia Supreme Court has denied Certiorari. The debtor claims to have an application for Certiorari pending in the Supreme Court of the United States. The Bankruptcy Court reinstated its previous judgment

against the debtor. She also denied the Debtor's Motion for reconsideration which is the order subject to this appeal.

The factual findings of the Bankruptcy Court are reviewed for clear error. In re A.W.& Associates, Inc. 136 F.3d1439, 1442 (11th Cir.1998). Conclusions of law are reviewed de novo. Id. Review on a writ of certiorari by the United States Supreme court is discretionary and not a matter of right. Therefore, for purposes of res judicata, the State Court judgments are final. The Bankruptcy Court did not err in reinstating the final judgment against the debtor and authorizing disbursement of the funds in the estate. The Order of the Bankruptcy Court denying the Motion for Reconsideration (Br. Doc,200) is AFFIRMED.

SO ORDERED, this 29 day of May, 2009

/s/Thomas W Thrash
THOMAS W. THRASH,JR.
United States District Judge

APPENDIX D

IT IS ORDERED as set forth below

Date: February 13, 2008 Sd/

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
MORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In ref:	:	CASE NUMBER
MOHAMMED A. FAIYAZ	;	01-64875-MGD
Debtor	:	CHAPTER 7

ORDER

THIS MATTER is before the Court on the Motion for Reconsideration filed by Dr. Suraiya Mateen (Docket No. 200) . The motion for reconsideration was filed on January 29, 2008, and attorneys for Frank dicus and Dicus Enterprises filed a Response on February 6, 2008 (Docket No. 201) for the reasons stated herein, Dr. Mateen's Motion for Reconsideration is DENIED.

The Court , however, recognizes the need for the finding with respect to a statement of jurisdiction in this matter. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 (b), as well as Rule 1070-1 of the Local rules of Practice for the United states Bankruptcy Court for the Northern District of Georgia. This matter is a core proceedings under 28 U.S.C § 1579b)(2)(A),(B),(H),(K), and (O).

The Motion for Reconsideration followed this Court's Order denying the Motion Requesting the court to issue orders compelling the trustee and frank Dicus and Dicus Enterprises to deposit $ 587,377 in the Court's registry (the "Motion") by Suraiya a. Mateen, individually and as trustee of Suraiya Faiyaz Living Trust, and Mohammed A. Faiyaz (Docket No. 198). The Motion followed the September 28, 2007 District Court's reversal and remand of this Cour's Order and Judgment from May 5, 2004 (Docket No. 103). The district Court limited its reversal and remand to this Court's erroneous reliance on the doctrine of res judicata in the May 5, 2004 Order and Judgment. In accord with the District Court's remand and following the Supreme court of Georgia's denial of the Dr. Mateen's writ of certiorari,(FootNote 3) the court ruled that the state court judgment was now entitled to preclusive effect. Therefore, the Court's may 5, 2004 Order and Judgment (Docket No. 189) was re-entered, as of January 8, 2008.

A Motion for reconsideration is appropriate only where there is "(1) newly discovered evidence, (2) an intervening development or change in contolling law, or (3) a need to correct a clear error or prevent

manifest injustice" Smith v. Constinental Gas Co. No. 1: 06-cv-14441-WSD,slip op. 2007 -+WL4355314 at 1(N.D.Ga. Dec.10, 2007) (internal citations omitted). Motions to reconsider are only appropriate in a confined scope of cases.Bryan v. Murphy, 246 F. Supp. 2d 1256,1259 (N.D. Ga. 2003). Motion for reconsideration are not an opportunity for the Moving party to instruct the court on how it "could have done it better" the first time, Pres Endangered areas of Cobb's History Inc. v. U.S. Army Corps of Eng'rs, 916 F. Supp. 1557, 1560 9N.D. Ga. 1995). Also Motions for Reconsideration are not appropriately used to present the court with arguments already heard and decided. Brogdon ex rel. Clinic v. Natl Healthcare Corp., 103 F. Supp. 2d 1332, 1338(N.D. Ga. 2000); see also Adler v. Wallace Cpmputer Servs, Inc., 202 F.R.D. 666. 675 (N.D. Ga. 2001). Motions presented under these circumstances must be denied. Brogdon ex rel Clinis, 103 F.R.D. at 1338.

Because Dr. Mateen has not shown newly discovered ecidence, a change in controlling law, or clear error, thethe Motion for Reconsideration is inappropriate. Accordingly, it is ____ORDERED that the Motion for Reconsideration is DENIED.

It is FURTHER ORDERED that the Court's January 18, 2008 Order (Docket No, 198) remain in full force and effect.

The clerk is directed to serve a copy of this order upon Debtor, Suraiya a.Mateen, the chapter 7 Trustee and the parties on the attached distribution list.

END OF DOCUMENT

FOOT NOTES

1. Case no. 1:04-cv-02137-CC

2. The September 28, 2007 District Court Order denied the following motions (1) emergency Motion of Appellant suraiya Mateen to declare the Bankruptcy Orders of April 3, 2003 and Final Orders of December 23, 2003 as Null and Void, (2) Petition of Appellant Suraiya Mateen to Grant Her Emergency Motion filed on May 26, 2005 and to Dismiss Trustee's Amended Complaint to Dtermine Interest in Properies and Sybsequent Proceeedings and Orders (3) Appellant's Motion Requesting the Court to Grant Her Motion filed on Docket Nos 23, 28, 30 & 39 and (4) Appellant's Request to strike off appellee Dicus's Status report filed on april 16,2007 and to impose sanctions against his attorneys

3. The Supreme Court of Georgia denied Dr. Mateen's petition for writ of certiorari on January 7, 2008, Case No. So7-C-1814